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**OFFICE OF PETITIONS**

|                                  |   |                      |
|----------------------------------|---|----------------------|
| In re Application of             | : |                      |
| Montagu et al.                   | : |                      |
| Application No. 10/618,838       | : | DECISION ON PETITION |
| Filed: July 14, 2003             | : |                      |
| Attorney Docket No. 13165-003001 | : |                      |

This is a decision on the petition filed July 12, 2004 (certificate of mailing of July 8, 2004), requesting that the above-identified application be accorded a filing date of July 14, 2003, with Figure 10A as part of the original disclosure.

On July 14, 2003, applicant filed the above-identified application. On April 8, 2004, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted (Notice), stating, *inter alia*, that the application was accorded a filing date of July 14, 2003; however, Figure 10A appeared to have been omitted upon filing the application.

On July 12, 2004 (certificate of mailing July 8, 2004), applicant submitted the present petition, a request for a one-month extension of time to respond, a declaration, replacement drawings including a drawing figure labeled Fig. 10A, and paid the requisite fees. Applicant stated the drawing as filed, marked 10A, lacked the word "FIG" before it. Applicant further stated that the omission had been corrected in the set of drawings submitted on petition.

It is obvious from the petition that no drawing was actually missing on July 14, 2003. Rather, the drawing of Figure 10A was simply unlabeled as a result of applicant's filing error. However, the Notice of April 8, 2004, was correct in stating that Figure 10A appeared to have been omitted. Therefore, the Notice was proper and will not be withdrawn.

Accordingly, the petition is dismissed.

The \$130.00 petition fee will be charged to Deposit Account No. 06-1050 because the present petition was not necessitated by any error on the part of the United States Patent and Trademark Office.

A preliminary amendment adding the proper label to the unlabeled drawing figure should be filed prior to the first action on the merits.

The Office of Initial Patent Examination is directed to accord the application a filing date of July 14, 2003, without Figure 10A, and to review the replacement drawings submitted on petition.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

*Christina Tartera Donnell*

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